

AMENDED IN SENATE APRIL 21, 2005

**SENATE BILL**

**No. 747**

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**Introduced by Senator Machado**

February 22, 2005

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An act to amend Sections ~~11316 and 11336~~ of 5100 and 22250 of, and to add Section 6106.3 to, the Business and Professions Code, to amend Section 19178 of, and to add Sections 19169.1, 19169.3, 19177.1, 19177.3, and 19178.5 to, the Revenue and Taxation Code, relating to taxation.

LEGISLATIVE COUNSEL'S DIGEST

SB 747, as amended, Machado. ~~Private railroad car tax. Tax professionals: discipline.~~

*Existing law regulates the practice of law and the practice of accounting in this state. Existing law also requires that a penalty be imposed against individuals who promote abusive tax shelters or who aid and abet in the understatement of tax liabilities.*

*This bill would make the imposition of penalties for promoting abusive tax shelters or aiding and abetting the understatement of tax liabilities grounds for the revocation or suspension of the license, permit, or certificate to practice of an attorney, accounting firm, person associated with an accounting firm, tax preparer, or other person. The bill would prohibit tax preparers assessed a final penalty for those activities from preparing taxes for a period of 5 years. The bill would impose specified penalties and prohibitions against other individuals and taxpayers who engage in specified activities related to abusive tax shelters or aiding and abetting the understatement of tax liabilities and would prohibit specified individuals from receiving compensation for tax services when the compensation is determined by reference to the amount of tax shown on a return. The bill would*

*require the Franchise Tax Board to notify specified state entities when a person is assessed a penalty for violating existing law and would require the State Bar to undertake a specified study of the activities of certain attorneys and report the State Bar's findings to the Legislature by a specified date. The bill would also increase the penalties for violations of existing law.*

~~The Private Railroad Car Tax Law requires the State Board of Equalization to assess private railroad cars, as specified, at their full value, and imposes a tax as prescribed by that law. That law provides for estimated and escape assessments and reassessments, as provided.~~

~~This bill would make technical, nonsubstantive changes to those provisions.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~ yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

- 1     SECTION 1. Section 5100 of the Business and Professions
- 2     Code is amended to read:
- 3     5100. After notice and hearing the board may revoke,
- 4     suspend, or refuse to renew any permit or certificate granted
- 5     under Article 4 (commencing with Section 5070) and Article 5
- 6     (commencing with Section 5080), or may censure the holder of
- 7     that permit or certificate for unprofessional conduct that includes,
- 8     but is not limited to, one or any combination of the following
- 9     causes:
- 10    (a) Conviction of any crime substantially related to the
- 11    qualifications, functions and duties of a certified public
- 12    accountant or a public accountant.
- 13    (b) A violation of Section 478, 498, or 499 dealing with false
- 14    statements or omissions in the application for a license, in
- 15    obtaining a certificate as a certified public accountant, in
- 16    obtaining registration under this chapter, or in obtaining a permit
- 17    to practice public accountancy under this chapter.
- 18    (c) Dishonesty, fraud, gross negligence, or repeated negligent
- 19    acts committed in the same or different engagements, for the
- 20    same or different clients, or any combination of engagements or
- 21    clients, each resulting in a violation of applicable professional
- 22    standards that indicate a lack of competency in the practice of

1 public accountancy or in the performance of the bookkeeping  
2 operations described in Section 5052.

3 (d) Cancellation, revocation, or suspension of a certificate or  
4 other authority to practice as a certified public accountant or a  
5 public accountant, refusal to renew the certificate or other  
6 authority to practice as a certified public accountant or a public  
7 accountant, or any other discipline by any other state or foreign  
8 country.

9 (e) Violation of Section 5097.

10 (f) Violation of Section 5120.

11 (g) Willful violation of this chapter or any rule or regulation  
12 promulgated by the board under the authority granted under this  
13 chapter.

14 (h) Suspension or revocation of the right to practice before any  
15 governmental body or agency.

16 (i) Fiscal dishonesty or breach of fiduciary responsibility of  
17 any kind.

18 (j) Knowing preparation, publication, or dissemination of  
19 false, fraudulent, or materially misleading financial statements,  
20 reports, or information.

21 (k) Embezzlement, theft, misappropriation of funds or  
22 property, or obtaining money, property, or other valuable  
23 consideration by fraudulent means or false pretenses.

24 (l) The imposition of any discipline, penalty, or sanction on a  
25 registered public accounting firm or any associated person of  
26 such firm, or both, or on any other holder of a permit, certificate,  
27 license, or other authority to practice in this state, by the Public  
28 Company Accounting Oversight Board or the United States  
29 Securities and Exchange Commission, or their designees under  
30 the Sarbanes-Oxley Act of 2002 or other federal legislation.

31 (m) Unlawfully engaging in the practice of public accountancy  
32 in another state.

33 (n) (1) *The imposition, by the Franchise Tax Board, of the*  
34 *penalty pursuant to Section 19177 or 19178 of the Revenue and*  
35 *Taxation Code on a registered public accounting firm, any*  
36 *person associated with a public accounting firm, or any other*  
37 *holder of a permit, certificate, license, or other authority to*  
38 *practice in this state.*

39 (2) *The Legislature finds and declares that the promotion of,*  
40 *and investment in, abusive tax shelters and the aiding or abetting*

1 *taxpayers in understating their taxes, constitutes serious*  
2 *problems that are undermining the fundamental integrity of the*  
3 *self-assessed tax system. The Legislature further finds and*  
4 *declares that it is in the public interest to revoke, suspend, or*  
5 *refuse to renew the permits, certificates, and licenses of any*  
6 *registered public accounting firm, persons associated with a*  
7 *registered public accounting firm, and any other holder of a*  
8 *permit, certificate, or license to practice in this state who*  
9 *promotes abusive tax shelters or who aids or abets taxpayers in*  
10 *understating their income and franchise tax liabilities.*

11 *SEC. 2. Section 6106.3 is added to the Business and*  
12 *Professions Code, to read:*

13 *6106.3. (a) It shall constitute cause for disbarment or*  
14 *suspension for an attorney to engage in conduct subject to*  
15 *penalty pursuant to Section 19177 or 19178 of the Revenue and*  
16 *Taxation Code.*

17 *(b) The Legislature finds and declares that the promotion of,*  
18 *and investment in, abusive tax shelters and the aiding or abetting*  
19 *taxpayers in understating their taxes, constitutes serious*  
20 *problems that are undermining the fundamental integrity of the*  
21 *self-assessed tax system. The Legislature further finds and*  
22 *declares that it is in the public interest to revoke or suspend the*  
23 *license of any attorney to practice in this state who promotes*  
24 *abusive tax shelters or who aids or abets taxpayers in*  
25 *understating their income and franchise tax liabilities.*

26 *SEC. 3. Section 22250 of the Business and Professions Code*  
27 *is amended to read:*

28 *22250. (a) A tax preparer shall maintain a bond issued by a*  
29 *surety company admitted to do business in this state for each*  
30 *individual preparing tax returns for another person. The principal*  
31 *sum of the bond shall be five thousand dollars (\$5,000). A tax*  
32 *preparer subject to this section shall provide to the surety*  
33 *company proof that the individual is at least 18 years of age*  
34 *before a surety bond may be issued.*

35 *(b) The bond required by this section shall be in favor of, and*  
36 *payable to, the people of the State of California and shall be for*  
37 *the benefit of any person or persons damaged by any fraud,*  
38 *dishonesty, misstatement, misrepresentation, deceit, or any*  
39 *unlawful acts or omissions by the tax preparer, or the tax*

1 preparers employed or associated with it to provide tax  
2 preparation services.

3 (c) The tax preparer filing the bond shall identify all tax  
4 preparers employed or associated with the tax preparer and shall  
5 provide for each employee or associate the evidence required by  
6 subdivision (a) to the surety company. A tax preparer employed  
7 or associated with a tax preparer shall be covered by the bond of  
8 the tax preparer with which he or she is employed or associated.  
9 However, in no event shall the total bond required for any single  
10 tax preparer and the tax preparers employed or associated with it  
11 be required to exceed one hundred twenty-five thousand dollars  
12 (\$125,000). The aggregate liability of the surety to any and all  
13 persons regardless of the number of claims against the bond or  
14 the number of years the bond remains in force shall not exceed  
15 five thousand dollars (\$5,000) for any one tax preparer. Any  
16 revision of the bond amount shall not be cumulative. The liability  
17 of the surety on the bond shall not include payment of any civil  
18 penalties, fines, attorneys' fees, or any other cost provided by  
19 statute or regulation.

20 (d) The tax preparer shall file an amendment to the bond  
21 within 30 days of a change in information contained in the bond,  
22 including a change in the tax preparers employed or associated  
23 with the tax preparer.

24 (e) (1) A tax preparer may not conduct business without  
25 having a current surety bond in the amount prescribed by this  
26 section.

27 (2) Thirty days prior to the cancellation or termination of any  
28 surety bond required by this section, the surety shall send a  
29 written notice of that cancellation or termination to the tax  
30 preparer and the California Tax Education Council, identifying  
31 the bond and the date of cancellation or termination.

32 (3) If a tax preparer fails to obtain a new bond by the effective  
33 date of the cancellation or termination of the former bond, the tax  
34 preparer shall cease to conduct business until that time as a new  
35 surety bond is obtained.

36 (f) Notwithstanding Section 995.710 of the Code of Civil  
37 Procedure, a tax preparer may not make a deposit in lieu of bond.

38 (g) A tax preparer shall furnish evidence of the bond required  
39 by this section upon the request of any state, federal agency or

1 any law enforcement agency or the California Tax Education  
2 Council.

3 *(h) A tax preparer for which a penalty pursuant to Section*  
4 *19177 or 19178 of the Revenue and Taxation Code has been*  
5 *assessed and finalized in accordance with subdivision (c) of*  
6 *Section 19180 of the Revenue and Taxation Code is prohibited*  
7 *from conducting the business subject to regulation pursuant to*  
8 *this chapter for five years from the date the penalty is finalized.*

9 SEC. 4. Section 19169.1 is added to the Revenue and  
10 Taxation Code, to read:

11 19169.1. (a) Any person for which a penalty pursuant to  
12 Section 19177 or 19178 of the Revenue and Taxation Code has  
13 been assessed and finalized in accordance with subdivision (c) of  
14 Section 19180 of the Revenue and Taxation Code is subject to all  
15 of the following:

16 (1) Suspension or prohibition from preparing tax returns for  
17 compensation or employing, or arranging for, any person to  
18 prepare tax returns for compensation.

19 (2) Suspension or prohibition from representing a person,  
20 other than himself or herself, before the Franchise Tax Board or  
21 State Board of Equalization in a matter arising under this part,  
22 Part 10, or Part 11.

23 (b) The Franchise Tax Board shall prescribe those regulations  
24 necessary to implement the purposes of this section.

25 (c) For purposes of this section, “person” includes related  
26 taxpayers as defined in Section 267 of the Internal Revenue  
27 Code.

28 SEC. 5. Section 19169.3 is added to the Revenue and  
29 Taxation Code, to read:

30 19169.3. (a) A person who performs any service related to  
31 financial information reflected on a return filed pursuant to this  
32 part, Part 10, or Part 11 may not receive compensation for that  
33 service, or portion thereof, that is determined or computed,  
34 directly or indirectly, by reference to the amount of tax shown on  
35 a return prepared by the person.

36 (b) For purposes of this section, “person” includes related  
37 taxpayers as defined in Section 267 of the Internal Revenue  
38 Code.

39 SEC. 6. Section 19177.1 is added to the Revenue and  
40 Taxation Code, to read:

1 19177.1. (a) A person or person who employs an individual  
2 who offers for sale or promotes the sale of an abusive tax shelter  
3 or listed transaction to a taxpayer may not prepare, for  
4 compensation, a tax return for that taxpayer.

5 (b) For purposes of this section, "person" includes related  
6 taxpayers as defined in Section 267 of the Internal Revenue  
7 Code.

8 (c) For purposes of this section, "prepare for compensation"  
9 shall include the activities described in subdivision (b) of Section  
10 19169.

11 SEC. 7. Section 19177.3 is added to the Revenue and  
12 Taxation Code, to read:

13 19177.3. Any person who fails to comply with Sections  
14 19169.3 or 19177.1 is subject to a penalty equal to the greater of  
15 ten thousand dollars (\$10,000) or 75 percent of the  
16 compensation the person received to prepare the tax return.

17 SEC. 8. Section 19178 of the Revenue and Taxation Code is  
18 amended to read:

19 19178. (a) A penalty shall be imposed for aiding and  
20 abetting understatement of tax liability. The penalty shall be  
21 determined in accordance with Section 6701 of the Internal  
22 Revenue Code, unless otherwise provided.

23 (b) For purposes of this section:

24 (1) The phrase "or should have known" shall replace the  
25 phrase "or has reason to believe" in Section 6701(a)(2) of the  
26 Internal Revenue Code.

27 (2) The phrase "should have known" shall replace the word  
28 "knows" in Section 6701(a)(3) of the Internal Revenue Code.

29 (3) Section 6701(b)(1) of the Internal Revenue Code shall be  
30 modified by substituting "\$25,000" for "\$1,000."

31 (4) Section 6701(b)(2) of the Internal Revenue Code shall be  
32 modified by substituting "\$100,000" for "\$1,000."

33 SEC. 9. Section 19178.5 is added to the Revenue and  
34 Taxation Code, to read:

35 19178.5. The Franchise Tax Board shall notify any and all  
36 appropriate state departments, agencies, and other similar  
37 organizations overseeing the person against whom a penalty is  
38 assessed pursuant to Section 19177 or 19178.

39 SEC. 10. The State Bar shall conduct a study to determine  
40 whether attorneys employed by accounting firms are giving legal

1 *advice to the accounting firm's clients that is to the possible*  
2 *detriment of the client. The State Bar shall report its findings to*  
3 *the Legislature within one year of the effective date of this act.*

4 ~~SECTION 1. Section 11316 of the Revenue and Taxation~~  
5 ~~Code is amended to read:~~

6 ~~11316. If the board makes an assessment pursuant to Section~~  
7 ~~11311, 11314, or 11315 due to the negligence of the taxpayer, a~~  
8 ~~penalty of 10 percent of the value of the estimated or escape~~  
9 ~~assessment shall be added to the assessment. If the estimated or~~  
10 ~~escape assessment is due to a fraudulent or willful attempt to~~  
11 ~~evade the tax, a penalty of 25 percent of the value of the~~  
12 ~~estimated or escape assessment shall be added to the assessment.~~  
13 ~~A willful failure to file a report as required by Article 2~~  
14 ~~(commencing with Section 11271) of this chapter shall be~~  
15 ~~deemed to be a willful attempt to evade the tax.~~

16 ~~If the assessee establishes to the satisfaction of the board that~~  
17 ~~the failure to file an accurate property statement was due to~~  
18 ~~reasonable cause and occurred notwithstanding the exercise of~~  
19 ~~ordinary care and the absence of willful neglect, the board shall~~  
20 ~~order the penalty abated, provided the assessee has filed with the~~  
21 ~~board written application for abatement of the penalty within the~~  
22 ~~time prescribed by law for filing a petition for reassessment.~~

23 ~~SEC. 2. Section 11336 of the Revenue and Taxation Code is~~  
24 ~~amended to read:~~

25 ~~11336. On or before August 1 the board shall complete the~~  
26 ~~assessment of all property required to be assessed and shall~~  
27 ~~notify the assessees thereof. This notice shall include an~~  
28 ~~announcement of the statutory period during which, and the place~~  
29 ~~at which, a petition for reassessment may be filed.~~